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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/667,400 | 09/23/2003 | Michael Brian Lee | BRIAN-0001 | 9360 |

21261 7590 11/22/2005

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| EXAMINER |
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ROBERTSON, TIARA S

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| ART UNIT | PAPER NUMBER |
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3635

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,400

Applicant(s)

LEE, MICHAEL BRIAN

Examiner

Tiara S. Robertson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6,9,10,15-19,21 and 22 is/are allowed.
- 6) ☐ Claim(s) 1-4,7,8,11-14 and 20 is/are rejected.
- 7) ☒ Claim(s) 1,11,12 and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: the claim states "...placed in the window track to seals the window track weep holes...". The word "to" should be deleted. Appropriate correction is required. Further, claim 1 attempts to define the size of the tube in relation to the window track. Since the window track is not claimed in combination with the tube, applicant cannot define the tube diameter length and shape in terms of the window track.
2. Claim 12 is objected to because of the following informalities: the word "proving" should be "providing". Appropriate correction is required.
3. Claim 21 is objected to because of the following informalities: the word "when" (line 5) should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1, 11, 12, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. The term "substantially" is indefinite.
6. Regarding claim 12, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by

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"and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

7. Claims 5 and 16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the scenting means" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 16 recites the limitation "...step of placing a scented oil..." in line 2. There is insufficient antecedent basis for this limitation in the claim. It appears that claim 16 should depend from claim 15 and not claim 12.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 8, and 11, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,765,094 to Gemmell.

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Regarding claims 1-4 and 7, Gemmell, discloses an apparatus comprising a flexible tube have a predetermined length and diameter (10 on fig. 1), where the tube is cloth (Col. 2, lines 1-2); a filling in the tube (18 on fig. 1) where the filling is made of paper or the like (Col. 1, line 68); and further comprising a scenting mean or insect repellant (Col. 1, lines 47-55).

Regarding claim 8, Gemmell discloses an apparatus as described in claim 1 where the tube is provided with a reclosable opening (see fig. 3).

Regarding claim 11, Gemmell discloses an apparatus as described in claim 1 where the tube is flexible and the filler is pliant.

3. Claims 12 and 20 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,405,488 to Brown.

Regarding claims 12 and 20, Brown teaches a method providing an apparatus comprising a flexible tube have a predetermined length and diameter (10 on fig. 1), with an interchangeable decorative cover (12 on fig. 2); filling the tube with a filling (14 on fig. 2); and placing the filled tube in the window track (see fig. 3). The applicant discloses that the filled tube is placed in the window track to seal the window track weep holes. This is considered functional language and is a statement of its intended use. The examiner is not required to meet the limitations of functional language when rejecting a claim on prior art.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,405,488 to Brown.

Regarding claim 13, Browns teaches the method as described in claim 12 and, where the tube comprises open or closed cell-foam or any insulating material (Col. 2, lines 46-47). It would have been obvious to one skilled in the art to comprise the tube of materials such as fabric, cloth or plastic since they are all materials used for insulation.

Regarding claim 14, Browns teaches the method as described in claim 12 and, where the filling comprises particulate weighting material (Col. 2, lines 48-49). Since polyethylene pellets are well known as a particulate weighting material, it would have been obvious to one skilled in the art to use polyethylene pellets as the filling.

Allowable Subject Matter

6. Claims 5, 6, 9, 10, 15-19, and 21-22 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter: Claims are allowable over prior art.

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Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tiara S. Robertson whose telephone number is 571-272-2944. The examiner can normally be reached on Monday-Thursday, 7-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TSR

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11/9/2005


Carl D. Friedman
Supervisory Patent Examiner
Group 3600